

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of an Investigation into the Rates  
Charged in the Drayton and Pembina  
Exchanges

ISSUE DATE: April 19, 2007

DOCKET NO. P-556, 6101/CI-06-1739

ORDER REQUIRING REFUNDS OR  
CREDITS TO CUSTOMERS IN THE  
PEMBINA AND DRAYTON EXCHANGES

**PROCEDURAL HISTORY**

On June 30, 2006, Polar Communications Mutual Aid (Polar) filed a petition for approval of a merger between Polar and its wholly-owned subsidiary Polar Telecommunications, Inc.<sup>1</sup> While gathering information regarding the merger, the Commission acquired information suggesting that Polar was charging untariffed rates to Minnesota customers in its Pembina and Drayton exchanges.

On January 2, 2007, the Commission approved the merger, with conditions, and opened an investigation regarding Polar's charging of untariffed rates to Minnesota customers in the Pembina and Drayton exchanges.

On February 20, 2007, the Department of Commerce (the Department) filed comments recommending that Polar provide refunds or credits with interest to customers in the affected exchanges.

On February 28, 2007, Polar filed comments agreeing that it had charged untariffed rates to Minnesota customers in the Pembina and Drayton exchanges and concurring with the Department's recommendation regarding the amount of refund or credit to affected customers.

On April 5, 2007, the Commission met to consider the matter.

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<sup>1</sup> See Docket No. P-556, 6101/PA-06-971.

## **FINDINGS AND CONCLUSIONS**

### **I. Customers Affected**

In July 2005, Polar commenced charging untariffed rates in the Pembina exchange affecting some 84 customers -- 39 of whom were business customers who were charged rates lower by \$20.87 per month than the company's authorized tariffs. At the same time, Polar started charging residential customers in the Pembina exchange rates higher by \$1.00 per month than its authorized tariffs.

In the Drayton exchange, Polar overcharged some 69 customers -- increasing its rates for both residential and business customers by 90 cents per month from July 1995 to July 2005. Polar again increased its rates in July 2005 by \$7.70 per month for residential customers and \$5.70 per month for business customers.

### **II. Department Recommendations**

The Department evaluated various remedies for Polar's practice of charging customers untariffed rates, including referral of the matter to the Office of Attorney General for consideration of civil penalties under Minn. Stat. § 237.461.<sup>2</sup> The Department also presented five different calculations of refunds or credits to customers, ultimately recommending that Polar provide refunds or credits with interest in the amount of \$9,474, covering the 14 month period from July 2005 to September 2006.

### **III. Commission Analysis and Action**

Minn. Stat. § 237.07, subd. 1 requires every telephone company to keep on file within the Department a specific rate, toll, or charge for every kind of noncompetitive service and price list for every kind of service subject to emerging competition, together with all rules and classifications used by it in the conduct of the telephone business, including limitations on liability.

Polar has acknowledged charging Minnesota customers the untariffed rates in the affected exchanges. The Commission therefore concludes that the company did in fact charge untariffed rates in its Pembina and Drayton exchanges. The issue presented here is the appropriate remedy to impose.

The Commission emphasizes that it is committed to maintaining accurate tariffs on file for all telephone companies and expects all companies to comply with the filing requirements of Minn. Stat. § 237.07. After due consideration, however, the Commission will not refer this matter to the Office of Attorney General for the pursuit of civil penalties.

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<sup>2</sup> Minn. Stat. § 237.461, subd. 2 states that a person who knowingly and intentionally violates a provision of this chapter or rule or order of the commission . . . shall forfeit and pay to the state a penalty . . . of at least \$100 and not more than \$5,000 for each day of each violation.

Although Polar Communications should have known that it was required to update its tariff to reflect the rates charged to customers as an authorized telephone company in Minnesota, the Commission, concludes that penalties under Minn. Stat. § 237.461 are not appropriate, as even imposing the minimum penalty of \$100 for each day of violation would result in a total penalty of over \$450,000. While the Commission takes seriously any allegation concerning the unauthorized provision of service, this amount is disproportionate to the relative harm to customers and would not serve the public interest in this matter.

Unlike penalties, however, customer credits or refunds serve to make customers whole for being charged untariffed rates. Refunding or crediting the total overcharges with interest for the 14 months between July 2005 and September 2006 is a reasonable remedy that restores the harm done to customers and neutralizes the company benefit.<sup>3</sup> Limiting the refund or credit to the 14 months between July 2005 and September 2006 captures the majority of the untariffed rate activity.<sup>4</sup>

Therefore, the Commission will require Polar to refund or credit customers with interest in the amount of \$9,474, covering the total overcharges in excess of tariffed rates for the 14 months between July 2005 and September 2006. For administrative convenience, the Commission will require Polar to divide the amount equally amongst its Minnesota customers affected by the overcharges in the Pembina and Drayton exchanges as discussed and agreed to by the parties at the April 5, 2007 Commission meeting.<sup>5</sup>

### **ORDER**

1. Polar shall promptly provide refunds or credits in the amount of \$9,474 equally to its Minnesota customers affected by overcharges in the Pembina and Drayton exchanges.
2. Polar shall file with the Commission a report detailing its refund compliance with calculations within 20 days after the refunds have been completed.

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<sup>3</sup> Any net refund that would reduce the overcharges to residential customers by the undercharges to business customers would unduly complicate the refund process. Moreover, it would not make residential customers whole.

<sup>4</sup> Taking this approach also avoids the numerous complications of attempting to refund or credit customers for untariffed rates for nearly 12 years.

<sup>5</sup> At the Commission meeting, counsel for Polar indicated that the company currently has 61 residential customers in the East Drayton exchange and 41 in the St. Vincent exchange, for a total of 102 current Minnesota customers who will share equally in the refund or credit.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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